

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 THOMAS SJOBERG,

Case No. 3:23-cv-00455-MMD-CLB

4 Plaintiff

ORDER

5 v.

6 SANDRA WALKER,

7 Defendant

8
I. DISCUSSION

9 Plaintiff has applied to proceed *in forma pauperis* ("IFP") in this action. (ECF No. 1).
10 On October 2, 2023, the Court issued a screening order permitting one claim to proceed
11 and dismissing the other claims with leave to amend by November 1, 2023. (ECF No. 3).
12 The Court deferred ruling on Plaintiff's IFP application. (*Id.* at 9). And the Court specifically
13 stated that if Plaintiff chose not to file an amended complaint, this action would proceed
14 on only the Eighth Amendment claim about indifference to the weather conditions against
15 Sandra Walker. (*Id.* at 10). The deadline expired and Plaintiff has not filed an amended
16 complaint. So this action will proceed as stated in the screening order.
17

II. CONCLUSION

18 IT IS THEREFORE ORDERED that, consistent with the Court's screening order
19 (ECF No. 3), this action will proceed on only the Eighth Amendment claim about
20 indifference to the weather conditions against Sandra Walker.
21

22 It is further ordered that given the nature of the claim that the Court has permitted
23 to proceed, this action is stayed for 90 days to allow Plaintiff and Defendant an opportunity
24 to settle their dispute before the Court will determine whether to grant Plaintiff's IFP
25 application, the \$350 filing fee is paid, an answer is filed, and the discovery process
26 begins. During this 90-day stay period and until the Court lifts the stay, no other pleadings
27 or papers may be filed in this case, and the parties will not engage in any discovery, nor
28 are the parties required to respond to any paper filed in violation of the stay unless

1 specifically ordered by the Court to do so. The Court will refer this case to the Court's
2 Inmate Early Mediation Program, and the Court will enter a subsequent order about that
3 matter. Regardless, on or before 90 days from the date this order is entered, the Office
4 of the Attorney General will file the report form attached to this order regarding the results
5 of the 90-day stay, even if a stipulation for dismissal is entered prior to the end of the 90-
6 day stay. If the parties proceed with this action, the Court will then issue an order setting
7 a date for Defendant to file an answer or other response. Following the filing of an answer,
8 the Court will issue a scheduling order setting discovery and dispositive motion deadlines.

9 It is further ordered that "settlement" may or may not include payment of money
10 damages. It also may or may not include an agreement to resolve Plaintiff's issues
11 differently. A compromise agreement is one in which neither party is completely satisfied
12 with the result, but both have given something up and both have obtained something in
13 return.

14 It is further ordered that if the case does not settle, then the Court will determine
15 whether to grant Plaintiff's IFP application. Plaintiff will be required to pay the full \$350
16 statutory filing fee for a civil action regardless of whether the Court grants his IFP
17 application. This fee cannot be waived, and the fee cannot be refunded once the Court
18 enters an order granting Plaintiff's IFP application. If Plaintiff is allowed to proceed IFP,
19 the fee will be paid in installments from his prison trust account. See 28 U.S.C. § 1915(b).
20 If Plaintiff is not allowed to proceed IFP, the full \$350 statutory filing fee for a civil action
21 plus the \$52 administrative filing fee, for a total of \$402, will be due immediately.

22 It is further ordered that if any party seeks to have this case excluded from the
23 inmate mediation program, that party will file a "motion to exclude case from mediation"
24 no later than 21 days prior to the date set for mediation. The responding party will have 7
25 days to file a response. No reply will be filed. Thereafter, the Court will issue an order, set
26 the matter for hearing, or both.

27
28

1 It is further ordered that if Plaintiff needs an interpreter to participate in the
2 mediation program, Plaintiff will file a notice identifying the interpretation language and
3 the need for the interpreter within 30 days from the date of this order.

4 It is further ordered that the Clerk of Court is directed to add the Nevada
5 Department of Corrections to the docket as an Interested Party and electronically serve
6 a copy of this order, the screening order (ECF No. 3), and a copy of Plaintiff's complaint
7 (ECF No. 4) on the Office of the Attorney General of the State of Nevada by adding the
8 Attorney General of the State of Nevada to the interested party on the docket. This does
9 not indicate acceptance of service.

10 It is further ordered that the Attorney General's Office will advise the Court within
11 21 days of the date of the entry of this order whether it will enter a limited notice of
12 appearance on behalf of Defendants for the purpose of settlement. No defenses or
13 objections, including lack of service, will be waived because of the filing of the limited
14 notice of appearance.

DATED THIS 6th day of November 2023.

3. 

United States Magistrate Judge

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THOMAS SJOBERG,

Plaintiff

Case No. 3:23-cv-00455-MMD-CLB

REPORT OF ATTORNEY GENERAL RE: RESULTS OF 90-DAY STAY

V.

SANDRA WALKER,

Defendant

**NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL WILL FILE THIS FORM.
THE INMATE PLAINTIFF WILL NOT FILE THIS FORM.**

On _____, the Court issued its screening order under 28 U.S.C. § 1915A stating that certain specified claims in this case would proceed. The Court ordered the Office of the Attorney General of the State of Nevada to file a report 90 days after the date of the entry of the Court's screening order to indicate the status of the case at the end of the 90-day stay. By filing this form, the Attorney General hereby complies.

REPORT FORM

Identify which of the two situations below describes this case, and follow the instructions corresponding to the proper statement.

17 Situation One: Mediated Case: The case was assigned to mediation by a court-
18 appointed mediator during the 90-day stay. Check ONE of the six statements below
and fill in any additional information as required, then proceed to the signature block.

A mediation session with a court-appointed mediator was held on _____, and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)

— A mediation session with a court-appointed mediator was held on _____, and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

— No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. (*If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.*)

- No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for _____ [enter date].
- No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.
- None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

* * * *

Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check ONE of the four statements below and fill in any additional information as required, then proceed to the signature block.]

- The parties engaged in settlement discussions and as of this date, the parties have reached a settlement (*even if the paperwork to memorialize the settlement remains to be completed*). (*If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.*)
- The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.
- The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.
- None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Submitted this _____ day of _____, _____ by:

Attorney Name:

Print

Signature

Address:

Phone:

Phone: